

**ASSEMBLY BILL**

**No. 551**

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**Introduced by Assembly Member Bermudez**

February 16, 2005

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An act to amend Section 1812.5095 of the Civil Code, and to amend Section 687.2 of the Unemployment Insurance Code, relating to employment agencies.

LEGISLATIVE COUNSEL'S DIGEST

AB 551, as introduced, Bermudez. Employment agencies.

Existing law governs employment agencies, including domestic agencies. These provisions provide that an employment agency is not the employer of a domestic worker if specified conditions are met, including (1) that the agreement between the agency and a domestic worker specifies that the domestic worker may not receive any training from the employment agency with respect to the performance of domestic work and that the domestic worker will perform the work without direction or control from the agency, as specified (2) that the agreement specifies that the agency shall not be deemed to be exercising supervision or control over the domestic worker if it contacts the person who has hired the domestic worker to determine whether the person is satisfied with the referral service and (3) that the agreement between the agency and the domestic worker provides that any payments made directly to the employment agency be deposited into a trust account until payment can be made to the domestic worker. Existing law further requires the agency to make specified disclosures regarding these provisions to the person seeking domestic services. A violation of these provisions is a misdemeanor.

This bill would provide that if the employment agency is not to be the employer of a domestic worker the domestic worker also may not

wear any uniform or other article of clothing or name badge that includes the name of the employment agency, and would delete the provision authorizing the agency to contact the person who has hired the domestic worker to determine whether the person is satisfied with the referral service. The bill would also require that if payment is made directly to the agency, the invoice provided to the person for whom the domestic worker performed a service must include the full name and the tax identification number of the trust account to which the payment is to be made and a specified notice. The bill would also expand the disclosures required to be made by an employment agency to a person seeking domestic services. Because a violation of these provisions is a misdemeanor, the bill would expand the scope of an existing crime, thereby imposing a state-mandated local program.

The bill would also make conforming changes with respect to an employment agency's status as an employer for purposes of unemployment compensation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1812.5095 of the Civil Code is amended  
2 to read:

3 1812.5095. (a) For purposes of this section, the term  
4 "employment agency" means an employment agency, as defined  
5 in paragraph (3) of subdivision (a) of Section 1812.501, or a  
6 domestic agency, as defined in subdivision (h) of Section  
7 1812.501.

8 (b) An employment agency is not the employer of a domestic  
9 worker for whom it procures, offers, refers, provides, or attempts  
10 to provide work, if all of the following factors characterize the  
11 nature of the relationship between the employment agency and  
12 the domestic worker for whom the agency procures, offers,  
13 refers, provides, or attempts to provide domestic work:

1 (1) There is a signed contract or agreement between the  
2 employment agency and the domestic worker that contains, at a  
3 minimum, provisions that specify all of the following:

4 (A) That the employment agency shall assist the domestic  
5 worker in securing work.

6 (B) How the employment agency's referral fee shall be paid.

7 (C) That the domestic worker is free to sign an agreement with  
8 other employment agencies and to perform domestic work for  
9 persons not referred by the employment agency.

10 (2) The domestic worker informs the employment agency of  
11 any restrictions on hours, location, conditions, or type of work he  
12 or she will accept and the domestic worker is free to select or  
13 reject any work opportunity procured, offered, referred, or  
14 provided by the employment agency.

15 (3) The domestic worker is free to renegotiate with the person  
16 hiring him or her the amount proposed to be paid for the work.

17 (4) The domestic worker does not receive any training from  
18 the employment agency with respect to the performance of  
19 domestic work *and does not wear any uniform or other article of*  
20 *clothing or name badge that includes the name of the*  
21 *employment agency.* However, an employment agency may  
22 provide a voluntary orientation session in which the relationship  
23 between the employment agency and the domestic worker,  
24 including the employment agency's administrative and operating  
25 procedures, and the provisions of the contract or agreement  
26 between the employment agency and the domestic worker are  
27 explained.

28 (5) The domestic worker performs domestic work without any  
29 direction, control, or supervision exercised by the employment  
30 agency with respect to the manner and means of performing the  
31 domestic work. An employment agency shall not be deemed to  
32 be exercising direction, control, or supervision when it takes any  
33 of the following actions:

34 (A) Informs the domestic worker about the services to be  
35 provided and the conditions of work specified by the person  
36 seeking to hire a domestic worker.

37 ~~(B) Contacts the person who has hired the domestic worker to~~  
38 ~~determine whether that person is satisfied with the agency's~~  
39 ~~referral service.~~

40 ~~(C)~~

1 (B) Informs the domestic worker of the time during which new  
2 referrals are available.

3 ~~(D)~~

4 (C) Requests the domestic worker to inform the employment  
5 agency if the domestic worker is unable to perform the work  
6 accepted.

7 (6) The employment agency does not provide tools, supplies,  
8 or equipment necessary to perform the domestic work.

9 (7) The domestic worker is not obligated to pay the  
10 employment agency's referral fee, and the employment agency is  
11 not obligated to pay the domestic worker if the person for whom  
12 the services were performed fails or refuses to pay for the  
13 domestic work.

14 (8) Payments for domestic services are made directly to either  
15 the domestic worker or to the employment agency. Payments  
16 made directly to the employment agency shall be deposited into a  
17 trust account until payment can be made to the domestic worker.

18 *If payment is made directly to the employment agency, the*  
19 *invoice provided by the employment agency to the person for*  
20 *whom the domestic worker performs services shall include the*  
21 *full name and tax identification number of the trust account to*  
22 *which the payment is to be made and include the following notice*  
23 *in 10-point type:*

24 *"(Name of the agency) is not the employer of the domestic*  
25 *worker who has been referred to you. You may elect to make*  
26 *payment for the services provided by the domestic worker*  
27 *directly to the domestic worker or to a trust account established*  
28 *by (Name of the agency)."*

29 (9) The relationship between a domestic worker and the  
30 person for whom the domestic worker performs services may  
31 only be terminated by either of those parties and not by the  
32 employment agency that referred the domestic worker. However,  
33 an employment agency may decline to make additional referrals  
34 to a particular domestic worker, and the domestic worker may  
35 decline to accept a particular referral.

36 (c) The fee charged by an employment agency for its services  
37 shall be reasonable, negotiable, and based on a fixed percentage  
38 of the job cost.

39 (d) An employment agency referring a domestic worker to a  
40 job shall inform that domestic worker, in writing, on or before

1 the signing of the contract pursuant to paragraph (1) of  
 2 subdivision (b), that the domestic worker may be obligated to  
 3 obtain business permits or licenses, where required by any state  
 4 or local law, ordinance, or regulation, and that he or she is not  
 5 eligible for unemployment insurance, state disability insurance,  
 6 social security, or workers' compensation benefits through an  
 7 employment agency complying with subdivision (b). The  
 8 employment agency referring a domestic worker shall also  
 9 inform that domestic worker, if the domestic worker is  
 10 self-employed, that he or she is required to pay self-employment  
 11 tax, state tax, and federal income taxes.

12 (e) An employment agency referring a domestic worker to a  
 13 job shall verify the worker's legal status or authorization to work  
 14 prior to providing referral services in accordance with procedures  
 15 established under federal law.

16 (f) An employment agency referring a domestic worker to a  
 17 job shall orally communicate to the person seeking domestic  
 18 services the disclosure set forth below prior to the referral of the  
 19 domestic worker the following disclosure statement:

20 “(Name of agency) is not the employer of the domestic worker  
 21 it referred to you. *The domestic worker does not receive any*  
 22 *training from (name of agency) and performs domestic work*  
 23 *without any direction, control, or supervision from (name of*  
 24 *agency).* Depending on your arrangement with the domestic  
 25 worker *and whether you direct or control the manner and means*  
 26 *by which the domestic worker performs his or her work,* you may  
 27 have employer responsibilities. *For additional information,*  
 28 *contact your state or local Employment Development*  
 29 *Department, the Franchise Tax Board, and the Internal Revenue*  
 30 *Service.”*

31 Within three business days after the employment agency refers  
 32 a domestic worker to the person seeking domestic services, the  
 33 following statement printed in not less than 10-point type shall be  
 34 mailed to the person seeking domestic services:

35 “(Name of agency) is not the employer of the domestic worker  
 36 it referred to you. The domestic worker may be your employee or  
 37 an independent contractor depending on the relationship you  
 38 have with him or her. If you direct and control the manner and  
 39 means by which the domestic worker performs his or her work  
 40 you may have employer responsibilities, including employment

1 taxes and workers' compensation, under state and federal law.  
2 For additional information contact your local Employment  
3 Development Department and the Internal Revenue Service."

4 (g) An employment agency referring a domestic worker to a  
5 job shall not specify that a worker is self-employed or an  
6 independent contractor in any notice, advertisement, or brochure  
7 provided to either the worker or the customer.

8 (h) Every employment agency referring a domestic worker to  
9 a job and who is not the employer of the domestic worker being  
10 referred, shall in any ~~paid~~ telephone directory advertisement or  
11 any other promotional literature or advertising distributed or  
12 placed by ~~such an~~ the employment agency, *and in any Internet*  
13 *Web site*, on or after January 1, ~~1995~~ 2006, insert the following  
14 statement, in no less than 6-point type ~~which~~ *that* shall be in print  
15 which contrasts with the background of the advertisement so as  
16 to be easily legible:

17 "(Name of agency) is a referral agency *and does not train,*  
18 *direct, or control the domestic workers referred by the agency.*"

19 (i) An employment agency may not refer, in its advertising,  
20 soliciting, or other presentments to the public, to any bond  
21 required to be filed pursuant to this chapter.

22 (j) An employment agency may not refer, in its advertising,  
23 soliciting, or other presentments to the public, to any licensure  
24 acquired by the agency.

25 (k) Any violation of this section with the intent to directly or  
26 indirectly mislead the public on the nature of services provided  
27 by an employment agency shall constitute unfair competition  
28 which includes any unlawful, unfair, or fraudulent business acts  
29 or practices and unfair, deceptive, untrue, or misleading  
30 advertising. Any person or entity that engages in unfair  
31 competition shall be liable for a civil penalty not to exceed two  
32 thousand five hundred dollars (\$2,500) for each violation.

33 SEC. 2. Section 687.2 of the Unemployment Insurance Code  
34 is amended to read:

35 687.2. Notwithstanding any other provision of law, an  
36 employment agency, as defined in paragraph (3) of subdivision  
37 (a) or subdivision (h) of Section 1812.501 of the Civil Code, *and*  
38 *which complies with Section 1812.5095 of the Civil Code*, shall  
39 not be deemed to be the employer of the domestic workers for

1 whom it procures, offers, refers, provides, or attempts to provide  
2 work if all of the following factors exist:

3 ~~(a) There is a signed contract or agreement between the~~  
4 ~~employment agency and the domestic worker that contains, at a~~  
5 ~~minimum, provisions that specify all of the following:~~

6 ~~(1) That the employment agency shall assist the domestic~~  
7 ~~worker in securing work.~~

8 ~~(2) How the employment agency's referral fee shall be paid.~~

9 ~~(3) That the domestic worker is free to sign an agreement with~~  
10 ~~other employment agencies and to perform domestic work for~~  
11 ~~persons not referred by the employment agency.~~

12 ~~(b) The domestic worker informs the employment agency of~~  
13 ~~any restrictions on hours, location, conditions, or type of work he~~  
14 ~~or she will accept and the domestic worker is free to select or~~  
15 ~~reject any work opportunity procured, offered, referred, or~~  
16 ~~provided by the employment agency.~~

17 ~~(c) The domestic worker is free to renegotiate with the person~~  
18 ~~hiring him or her the amount proposed to be paid for the work.~~

19 ~~(d) The domestic worker does not receive any training from~~  
20 ~~the employment agency with respect to the performance of~~  
21 ~~domestic work. However, an employment agency may provide a~~  
22 ~~voluntary orientation session in which the relationship between~~  
23 ~~the employment agency and the domestic worker, including the~~  
24 ~~employment agency's administrative and operating procedures,~~  
25 ~~and the provisions of the contract or agreement between the~~  
26 ~~employment agency and the domestic worker are explained.~~

27 ~~(e) The domestic worker performs domestic work without any~~  
28 ~~direction, control, or supervision exercised by the employment~~  
29 ~~agency with respect to the manner and means of performing the~~  
30 ~~domestic work.~~

31 ~~The following actions exercised by an employment agency~~  
32 ~~shall not be considered to be the exercise of direction, control, or~~  
33 ~~supervision:~~

34 ~~(1) Informing the domestic worker about the services to be~~  
35 ~~provided and the conditions of work specified by the person~~  
36 ~~seeking to hire a domestic worker.~~

37 ~~(2) Contacting the person who has hired the domestic worker~~  
38 ~~to determine whether that person is satisfied with the agency's~~  
39 ~~referral service. This contact shall not be used to identify~~  
40 ~~improvements needed in a worker's performance and to then~~

1 ~~discipline or train the worker regarding the performance of~~  
2 ~~domestic work.~~

3 ~~(3) Informing the domestic worker of the time during which~~  
4 ~~new referrals are available.~~

5 ~~(4) Requesting the domestic worker to inform the employment~~  
6 ~~agency if the domestic worker is unable to perform the work~~  
7 ~~accepted.~~

8 ~~(f) The employment agency does not provide tools, supplies,~~  
9 ~~or equipment necessary to perform the domestic work.~~

10 ~~(g) The domestic worker is not obligated to pay the~~  
11 ~~employment agency's referral fee, and the employment agency is~~  
12 ~~not obligated to pay the domestic worker if the person for whom~~  
13 ~~the services were performed fails or refuses to pay for the~~  
14 ~~domestic work.~~

15 ~~(h) Payments for domestic services are made directly to either~~  
16 ~~the domestic worker or to the employment agency. Payments~~  
17 ~~made directly to the employment agency shall be deposited into a~~  
18 ~~trust account until payment can be made to the domestic worker.~~  
19 ~~Payments made to the domestic worker by the employment~~  
20 ~~agency shall not be paid from any of the employment agency's~~  
21 ~~business accounts.~~

22 ~~(i) The relationship between a domestic worker and the person~~  
23 ~~for whom the domestic worker performs services may only be~~  
24 ~~terminated by either of those parties and not by the employment~~  
25 ~~agency that referred the domestic worker. However, an~~  
26 ~~employment agency may decline to make additional referrals to a~~  
27 ~~particular domestic worker, and the domestic worker may decline~~  
28 ~~to accept a particular referral.~~

29 SEC. 3. No reimbursement is required by this act pursuant to  
30 Section 6 of Article XIII B of the California Constitution because  
31 the only costs that may be incurred by a local agency or school  
32 district will be incurred because this act creates a new crime or  
33 infraction, eliminates a crime or infraction, or changes the  
34 penalty for a crime or infraction, within the meaning of Section  
35 17556 of the Government Code, or changes the definition of a  
36 crime within the meaning of Section 6 of Article XIII B of the  
37 California Constitution.